

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 13119 of 2006
WITH
CRIMINAL MISC.APPLICATION No. 13564 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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KANTIBHAI BHAWARBHAI PATEL - Applicant(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

CR.MA NO. 13119/2006

MR AY KOGJE, APP for APPLICANT(s) : 1,

MR KJ PANCHAL for respondent(s):1-2.

CR.MA NO. 13564/2006

MR BM MANGUKIYA WITH MS BELA A PRAJAPATI for APPLICANT(s) : 1

MR AY KOGJE, APP for respondent(s):1,

MR KJ PANCHAL for respondent(s)2-3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/05/2007

ORAL JUDGMENT

1. These applications have been filed by the State and original complainant respectively seeking cancellation of bail of the respondents who are original accused.

2. On 19th July, 2006, a complaint came to be filed by one Kantibhai Bhavanbhai Patel stating inter-alia that one Chetankumar alias Ghanshyamhai is his nephew(here-in-after referred to as "the deceased") is found dead lying at a spot near village Dhakdi. The complainant stated that deceased had gone with respondent no.1 herein and another person in a Maruti Car for going to Patdi but had not returned home till late upon which he set out to search him. During his search, he found his nephew lying dead on the side of the road. Initially case of accidental death was recorded.

2.1 During the investigation, the prosecution recorded statements of several persons and concluded that there is sufficient evidence against the present respondents to proceed against them for having committed murder of the deceased.

2.2 As per the prosecution case, Viralben, wife of deceased had extramarital relations with respondent no.1. Deceased and respondent no.1 were friends. Respondent no.1 was employed as an

operator at a petrol pump. Respondent no.2 was also employed in the same petrol pump as a Supervisor. On the date of incident, respondents as well as the deceased had gone out in Maruti Zen Car belonging to the owner of the petrol pump. The deceased was deliberately run over by respondent no.1 by the car. His body was thereafter, taken to another spot and dumped from where it was found. Both the accused persons were arrested pursuant to the said offence. They applied for regular bail before the learned Sessions Court, Viramgam.

2.3 Learned Additional Sessions Judge, Viramgam by his order dated 10th October, 2006, granted regular bail to both the accused persons. Learned Judge felt that respondent no.1 herein has not misled the police which is a factor in his favour. The act of respondent no.1 amounts to serious offence however, for such an act it is only Viralben who is responsible and it is Viralben who had inspired respondent no.1 to commit such an act. Since according to the learned Judge, respondent no.1 committed offence only keeping her in mind, it is Viralben who ought to have been accused in this case, since the entire episode took place on account of Viralben and her love affair. Learned Judge observed that Viralben is a characterless person. She has admitted of sexual relations with respondent no.1. On this ground, learned

Judge found that accused should be enlarged on bail. He also opined that though there are allegations of having committed serious offence, same are yet to be proved. However, at this stage, accused deserves to be enlarged on bail since as otherwise they would suffer economic loss and their family would also suffer. Learned Judge observed that respondent no.2 was an ordinary employee and there is nothing on record to suggest that respondent no.1 committed offence with the help of respondent no.2. It was further observed that though respondent no.1 has committed serious offence, he is not a habitual offender and Viralben is responsible for inciting the accused for committing offence. On this ground, learned Judge was pleased to order releasing of both the accused on bail on certain conditions.

3. Learned APP Shri Kogje as well as learned advocate Shri Mangukiya for the applicants submitted that bail granted by learned Judge deserves to be cancelled. They submitted that bail has been granted on wholly irrelevant considerations and learned Judge has not even given proper reasons for releasing the accused persons on bail despite allegations of having committed grave offence and there being sufficient material on record collected by the prosecution.

4. On the other hand, learned advocate Shri K.J. Panchal for the respondents submitted that learned Judge having exercised his discretionary powers, this Court would not be justified in cancelling the bail. He submitted that even if this Court comes to the conclusion that Sessions Judge did not give proper reasons, bail may be cancelled but the learned Sessions Judge may be directed to reconsider the question of grant of bail. He submitted that after being released on bail, accused have not misused the liberty or tampered with the evidence.

5. Having heard learned advocates appearing for the parties, I find that insofar as respondent no.1 is concerned, learned Judge has given strange and totally unacceptable reasons for enlarging him on bail. By no yardstick, reasons stated by learned Judge would stand the test of law or reasonableness. There is nothing on record to suggest even from prosecution account that Viralben had at any stage prompted respondent no.1 to eliminate her husband. That being so, learned Judge totally overstepped his authority in observing that it is Viralben who is at the bottom of entire problem and she is the one who incited the accused no.1 to commit crime. Learned Judge in my opinion crossed all limits while stating that it should be Viralben who should be the accused in this case. With all restraint at my command, I cannot help

observing that criminal prosecution and trials are conducted on certain well settled and well recognised legal and judicial principles. It is not a matter of emotions and certainly not an outdated ancient and thoroughly irrelevant social beliefs about the status of a women in the society. With a ting of sadness, I must observe that learned Judge harbors under certain social beliefs which are totally unacceptable to any civilised society.

6. Coming to the question of cancellation of bail, it is true that ordinarily the grounds on which such bail can be cancelled would be some supervening circumstances or development arising after the bail order has been granted including the allegations of misuse of liberty by the accused and that cogent and substantial reasons would be required to cancel the bail granted by the Sessions Court in exercise of discretionary powers. However, such grounds are not exhaustive. Reliance in this regard may be made in following cases :

- 1) **State of UP through CBI v. Amarmani Tripathi**, (2005)8 Supreme Court Cases 21
- 2) **Puran v. Rambilas and another**, (2001) 6 Supreme Court Cases 338.
- 3) **State of Gujarat v. Salimbhai Abdulaffar Shaikh and others**, AIR 2003 Supreme Court 3224

7. Coming to the facts of this case, from the

available material on record collected by the prosecution, prima facie, it would be clear that there is sufficient material on record to proceed against respondent no.1 for having committed preplanned cold blooded murder. The accused and deceased were last seen together. They had proceeded together in a common car after which the deceased did not return and was later on found dead on the road side. Respondent no.1 though owned his own car, borrowed car of his employer for a day. Both the accused persons were seen vigorously washing the car at night at the petrol pump. The car upon return, was found to have been dented by the owner. Upon being asked, respondent no.1 told him that a cow had run in and dashed against the car but that he would have it repaired at his own cost. There were eye witnesses who had seen the body of the deceased being dumped from the car but when chased on scooter, the car sped away. According to the prosecution respondent no.1 with help of respondent no.2 committed offence since he had relations with wife of the deceased. I am conscious that evidence collected by the prosecution is yet to be tested in the trial. However, at this stage, it cannot be denied that there is sufficient material on record to proceed against the accused for having committed a very serious offence. Ignoring all these aspects of the matter, learned Judge by giving thoroughly irrelevant and totally unacceptable

reasons ordered release of these accused persons on bail. So far as accused no.1 i.e. respondent no.1 herein is concerned, his bail order cannot be allowed to stand.

8. So far as respondent no.2 is concerned, his role is somewhat of lesser seriousness. Prima facie, it would appear that he was a subordinate. His role is somewhat obscure. Considering all these aspects of the matter, I do not find any reason to disturb the bail granted to respondent no.2.

9. Under the circumstances, this petition is allowed partially. Order dated 10th October, 2006 by which learned Additional Sessions Judge granted bail to respondent no.1 is quashed. Bail granted to respondent no.2 is however, not disturbed.

10. With these directions, petition is disposed of. Rule made absolute in the above terms.

11. At the request of learned advocate Shri Panchal for respondents, respondent no.1 shall have seven days time from today to surrender before the police.

(Akil Kureshi, J.)

(raghu)